## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA FLORENCE DIVISION

Southern Holdings, Inc.; James Spencer; Rodney Keith Lail; Irene Santacroce; Ricky Stephens; Marguerite Stephens; Doris Holt; and Nicholas C. Williamson,	Civil Action No.: 4:02-1859-RBH ) )
Plaintiffs,	) )
VS.	) )
Horry County, South Carolina; Horry County Sheriff's Department; Horry County Police Department; James Albert Allen, Jr., Individually and in his official capacity as an officer with the Horry County Sheriff's Department; Sidney Rick Thompson, Individually and in his official capacity as an officer with the Horry County Sheriff's Department; Jeffrey S. Caldwell, Individually and in his official capacity as an officer with the Horry County Sheriff's Department; Charles McClendon, Individually and in his official capacity as an officer with the Horry County Police Department; Jay Brantley, Individually and in his official capacity as an officer with the Horry County Police Department; Andy Christensen, Individually and in his official capacity as an officer with the Horry County Police Department; Michael Steven Hartness; Harold Steven Hartness; Ancil B. Garvin, III; David Smith; and John Does,	ORDER  ORDER  ORDER  ORDER  ORDER  ORDER  ORDER
Defendants.	) ) )

Pending before the court is Plaintiff James Brian Spencer's motion to compel the production of documents which was filed on May 6, 2005. The plaintiff states that he served his fifth request for production of documents upon Defendants Horry County Police Department and Horry County Sheriff's

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Department and their attorney of record on March 9, 2005. The request asked for an exemplar tape

from Officer Brantley's records. On April 6, 2005, the Horry County defendants responded to the

request by stating all videotapes and equipment were delivered to Plaintiff's videotape expert and that

they are not in possession of this request. In this motion, the plaintiff asks this court for an Order

compelling the defendants to provide the requested videotape. However, this court cannot order the

defendants to produce a videotape which they assert they do not have.

Additionally, this Court takes note that under Local Rule 37.01 (D.S.C.) motions to compel

discovery must be filed within twenty (20) days after the receipt of the discovery response to which the

motion to compel is directed. Considering such, this motion was filed untimely.

Therefore, for the reasons stated above, the plaintiff's motion to compel (Doc. # 134) is

DENIED.

AND IT IS SO ORDERED.

s/ R. Bryan Harwell

R. Bryan Harwell

United States District Judge

Florence, South Carolina July 18, 2005.

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